

Milwaukee County Clerk of Circuit Courts

Small Claim Procedure In Brief

This is a summary of basic procedures and information for small claims matters. A small claims action may be filed if the claim does not exceed \$5000. However, all eviction cases, regardless of the amount of rent claimed, are filed in small claims court. You are responsible for presenting your own case. It is not necessary to be represented by an attorney. The Clerk of Circuit Court, court commissioners and other court personnel are not authorized to provide legal advice. Small Claims procedures are contained in Chapter 799 of the Wisconsin Statutes. You should also refer to District I Rules, Section IX for local procedures. An informational video is available. (These items are found in the Milwaukee Legal Resource Center, Room 307A, Courthouse.) There is a Small Claims Information Line available at (414) 278-4140.

DEFINITIONS

Summons: The form used to notify the defendant of a lawsuit.

Complaint: The statement describing why the defendant is being sued.

Answer: A statement setting forth the basis of a defense.

Counterclaim: A claim by the defendant in opposition to the claim of the plaintiff.

Plaintiff: The person filing the lawsuit.

Defendant: The person(s) being sued.

Judgment Creditor: Successful party in a small claims lawsuit.

Judgment Debtor: Unsuccessful party in a small claims lawsuit.

Satisfaction: A document indicating that the judgment has been paid.

For most claims, the proper county to file your lawsuit:

- (1) Where the claim arose;
- (2) Where the subject property is located;
- (3) Where the defendant resides or does substantial business.

It is your responsibility to review the facts of your case and to decide where to file your action.

FORMS

In Milwaukee County, the summons must be printed in English and Spanish.

Small claims summons and complaint forms are purchased from the Clerk of Circuit Court cashiers in Room 104, Courthouse. Samples are available to help you fill out both forms. A sign in Room 104 gives information on potential court dates. An Answer and Counterclaim forms can be obtained in Room 104.

SELECTED FEE SCHEDULE (Effective July 27, 2005)

| Action | Fee |
|---|------------|
| Copies (per page) | \$ 1.25 |
| Certification | 5.00 |
| Docketing | 5.00 |
| Satisfaction | 5.00 |
| Small Claims: | |
| Garnishment | 87.50 |
| Commence Action | 89.50 |
| Crossclaim or Counterclaim over \$5,000 | 119.50 |
| 3 rd Party Complaint | 111.50 |
| Large Claims: | |
| Garnishment | 205.50 |
| Commence Action: Amount Claimed | |
| Greater than \$5,000 | 259.50 |
| No Dollar Amount | 158.50 |
| 3 rd Party Complaint | 229.50 |
| Name Change | 158.50 |

SETTING A HEARING DATE

You may choose your own court date with certain restrictions. Your first court date cannot be more than 30 days from the date that you file the summons. For eviction actions, the defendant must be served at least five days prior to the first court date. For all other small claims cases, the defendant must be served at least eight days prior to the first court date. Make sure that you allow adequate time to accomplish timely service when choosing your court date. Remember that Saturdays, Sundays, and holidays are not included in computing the number of days required for proper service.

All small claims cases and eviction actions are first heard in Room 400, Courthouse. Small claims actions are scheduled at 9:00 a.m. Eviction actions are scheduled for 2:00 p.m.

FILING SUMMONS AND COMPLAINT

Both the summons and the complaint must be filed to begin a lawsuit. The originals of the summons and complaint must be filed with the Intake section in Room 104 Courthouse before a copy may be served on the defendant. A case number will be assigned at this time. The next step is to arrange for service on the defendant.

SERVICE OF SUMMONS

Summonses and complaints may be served by the sheriff, a private process server, or any adult resident of the state who is not a party to the lawsuit. Service by mail is not authorized in Milwaukee County. If you choose the sheriff, the papers should be taken to Room 102, Safety Building, 821 West State Street.

The sheriff's hours are Monday through Friday, from 8:00 a.m. to 4:00 p.m. The fee for service by the sheriff is set by law.

The Milwaukee County sheriff does not serve papers outside of Milwaukee County. If service is to be made outside of the county, contact the sheriff for that county or a private process server to make service arrangements.

A copy of the summons and complaint should be personally served on the defendant or a competent member of the defendant's household. If, with reasonable diligence, the defendant cannot be personally served, the plaintiff may appear on the court date and ask for an adjournment to allow for service by publication. Publication is accomplished by placing a notice in the legal section of a local newspaper for one week and mailing a copy of the summons and complaint to the defendant's last known address. Publication forms are available in the small claims court or from the cashiers in Room 104.

HEARINGS

All Small Claims Cases are heard in Room 400 of the Courthouse. The plaintiff must appear on the court date or the case will be dismissed. When the case is called, proof of service must be filed. This should be a sworn statement in writing signed by the process server. If the defendant does not appear, a default judgment will be granted. A defendant who is a resident of Milwaukee must appear in person on the court date to answer the complaint. Non-county residents may submit a written answer before the court date instead of appearing. Any defendant may file a counterclaim against the plaintiff or a cross complaint against a co-defendant. There is no fee if the claim is for less than

\$5000, but a fee is charged for claims over \$5000 (see fee schedule). The parties should consider a settlement. Mediators are available to help with settlement discussions. If no settlement occurs, a hearing will be held immediately or scheduled for another date. A commissioner or judge will weigh the evidence and render a decision. If either party objects to the decision, they may file a Demand for Trial or Jury Trial. Instructions are provided in Room 400.

JUDGMENT

Once judgment is granted, it will be entered on the court record by clerk of circuit court staff and a "Notice of Entry of Judgment" will be mailed to each party at their last known address. This notice will state the amount of the judgment, including statutory costs.

COSTS

State law directs the Clerk of Circuit Court to compute costs and insert them in the judgment in favor of the successful party as follows: filing fee, service fees, statutory attorney fees, witness fees, jury fee, and any other costs which may be allowed by the court.

DISCLOSURE OF ASSETS

State law provides that if a person obtains a judgment for money, they are entitled to receive information regarding the financial status of the unsuccessful party within 15 days after entry of judgment. A form called "Order for Financial Disclosure and Financial Disclosure of Assets" is available in the small claims courtroom (Room 400 Courthouse), and should be requested from the court clerk when judgment is granted. This should be mailed to the judgment debtor. Failure of the judgment debtor to provide this information in writing to the judgment creditor is punishable by court imposed sanctions. The judgment creditor may compel the judgment debtor to appear in court and disclose this information by filing a "Petition and Order for Hearing." This form is also available in Room 400 Courthouse. If the judgment debtor fails to appear at this hearing, the court may issue a Body Attachment for arrest.

COLLECTION

A court judgment in your favor does not automatically result in the payment of money. If the debtor does not pay voluntarily, you must initiate collection of a judgment. Further court procedures are necessary. The primary methods available to small claims litigants for enforcing the payment of judgments are: (A) Garnishment and (B) Writs of Execution. (A) Garnishment is a method of collection that allows the judgment creditor to obtain monies owed by others to the judgment debtor, usually by attaching the judgment debtor's earnings or bank accounts. (See §814 Wis. Stats.)

(B) A judgment creditor may ask the court for a Writ of Execution directing the sheriff to seize specific, non-exempt personal or real property belonging to the judgment debtor for the purpose of satisfying a judgment. You may want to obtain professional legal advice to decide if a Writ of Execution is appropriate for your case. (See §815 Wis. Stats.)

DOCKETING THE JUDGMENT

Once a judgment has been obtained, the judgment creditor may “docket” it by taking the case file to the cashier in Room 104 Courthouse and paying a fee. When a judgment is docketed, it becomes a lien on any real estate owned by the judgment debtor in Milwaukee County for 10 years. However, it is not required that a judgment be docketed to attempt collection from the judgment debtor.

REOPENING JUDGMENTS

The small claims court may reopen a default judgment if the motion to reopen is filed within six months after the entry of judgment and a good reason exists. To reopen the judgment, a “Notice of Motion and Motion to Reopen” is prepared and submitted to the court commissioner in Room 400 Courthouse. This form is available in Room 400 Courthouse. The commissioner reviews the request and refers the case to the small claims judge. A date and time for the hearing is obtained from the court clerk for the judge. A copy of the notice of motion must be served on the opposing party at least five days before the motion date. Do not count Saturdays, Sundays and holidays. The judge will determine whether the judgment will be set aside and a hearing held on the merits of the case.